

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, February 2, 2005, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Gene Carroll, Gerry Krieser, Roger Larson, Dan Marvin, Melinda Pearson, Mary Bills-Strand, Lynn Sunderman and Tommy Taylor; Marvin Krout, Ray Hill, Mike DeKalb, Ed Zimmer, Brian Will, Becky Horner, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held January 19, 2005. Motion for approval made by Carroll, seconded by Carlson and carried 7-0: Carlson, Carroll, Larson, Marvin, Bills-Strand, Sunderman and Taylor voting 'yes'; Krieser and Pearson abstaining.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

February 2, 2005

Members present: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 05001; SPECIAL PERMIT NO. 1386C, an amendment to the WINDHOEK 4TH ADDITION COMMUNITY UNIT PLAN; SPECIAL PERMIT NO. 04073; SPECIAL PERMIT NO. 05001; COUNTY SPECIAL PERMIT NO. 195, BEAVER CREEK COMMUNITY UNIT PLAN; and COUNTY PRELIMINARY PLAT NO. 02011, BEAVER CREEK.**

Ex Parte Communications:

Marvin disclosed that he was contacted and encouraged to vote in favor of Item No. 1.3, Special Permit No. 04073.

Bills-Strand disclosed that she was also contacted to see if she had any questions about Special Permit No. 04073.

Item No. 1.2, Special Permit No. 1386C, was removed from the Consent Agenda and scheduled for separate public hearing.

Carlson moved to approve the remaining Consent Agenda, seconded by Carroll and carried 9-0: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'.

This is final action on Special Permit No. 1386C and Special Permit No. 05001, unless appealed to the City Council within 14 days.

SPECIAL PERMIT NO. 1386C,
AMENDMENT TO THE WINDHOEK 4TH ADDITION
COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT S. 112TH STREET AND VAN DORN STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 2, 2005

Members present: Carlson, Sunderman, Marvin, Taylor, Pearson, Carroll, Krieser, Larson and Bills-Strand.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda at the request of Dr. Peter Howe.
Proponents

1. Brian Carstens appeared on behalf of **Dick and Ann Hudson**, the owners of the remaining portion of the Windhoek CUP. They are proposing to expand the CUP into the open area, basically north and east of the existing lots that were platted in the 1990's. This project requires the build-through standard and they have shown how the lots would be further subdivided and set up with easements for future sewer and water extensions. The applicant agreed with the conditions of approval.

Marvin asked Carstens to discuss the challenges of the build-through standards. Carstens stated that every parcel has been different. This one has been a little bit more difficult. They are all different and they require more thought with the build-through requirements.

Opposition

1. Peter Howe testified on behalf of the neighborhood association out at Windhoek. About four years ago, he purchased a 5-acre lot. There was no pond at the time, but he was told that there would be a beautiful pond as part of the common area. He was under the premise that the integrity of Windhoek would be maintained with the larger lots and that the country look was the future plan and intent. He met with the owners and they always talked about something "in the future", but the impetus was to maintain it as country living and keep it that way. Dr. Howe believes that this proposal strays from the integrity of the initial design of Windhoek. He is concerned about fitting 17 lots into this one area; and smaller lots do not fit the intent of the developer as written in the protective covenants. The radical change in the lots is not in accord with sound planning practice. Dr. Howe is specifically concerned about traffic flow and utilities for higher density population, including water and sewage. He realizes that the owner has the right to develop but this proposed amendment was not what was represented by the owner to the other property owners. The large number of lots is not conducive to enjoy the trails and the wildlife. Dr. Howe asked the Commission to recommend denial of this amendment.

Response by the Applicant

Carstens could not speak to the issue over previous commitments made by the original developer because the Hudsons are currently out of state. The water report indicates that the potential for adequate and potable water supply is excellent. Water will not be an issue. Carstens noted that the developer cannot prohibit lagoons, but the Hudsons have always encouraged other methods approved by the Health Dept. The intent is to maintain the integrity of the riding trails through the back and wooded areas. The perimeter will still have the trail easement along the outside. The reason the other lots in Windhoek were included in this proposal is because they are currently zoned AG and without including them in the CUP they would be in a nonconforming situation.

Bills-Strand inquired whether this area is included in the protective covenants. Carstens believes that Outlot A would be included in this CUP amendment.

Pearson inquired about the covenants and Carstens advised that he could not speak to the covenants on behalf of the owner.

Staff questions

Pearson inquired as to whether the covenants are a legal agreement. Rick Peo of the City Law Department advised that the protective covenants are a private contract between the original subdivider and the lot buyers. Lot owners would have the right to enforce and maintain those covenants, but it is nothing that the city has a voice in or concern about.

Pearson asked whether the Planning Commission can approve a land use that is in conflict with a contract between two parties. Peo does not know whether there is a conflict. It is a private matter. The City regulates only on the subdivision ordinance. The protective covenants are a risk the developer takes. He should be aware what he is doing.

Carlson noted that the property is in Tier I. Mike DeKalb of Planning staff confirmed that it is right on the edge of Tier I. Tier I picks up Walton and follows the ridge line. Carlson inquired as to the language in the Comprehensive Plan about building acreages in Tier I. DeKalb acknowledged that the Plan states that acreages in Tier I should be discouraged; however, this property is already zoned AGR. There is split zoning on the large parcel. The CUP includes both AG and AGR zoning and it was kept all together to keep the density requirements for the lots on the south end.

ACTION BY PLANNING COMMISSION:

February 2, 2005

Larson moved to approve the staff recommendation of conditional approval, seconded by Sunderman.

Carlson commented that this is a classic example of difficulties with acreage placement, especially in tight acreage placement. However, he is respectful of the Comprehensive Plan in that the property is zoned AGR. The Plan was adopted in 2001, so hopefully, whoever was purchasing property could have seen that as part of the record and what was available as AGR. Everybody wants to have a country setting for their home, but they want to be 30 blocks from the city. In general, we need to be mindful of the situation as we approve these projects, and remember that when we agreed to do broader zoning and planning, the philosophy was that we try to keep acreages out of these areas to avoid the conflicts.

Pearson noted that the designation of the northern part as AGR is a part of public record. But we have proof that a landowner has covenants that say just the opposite. While the Commission cannot pay attention to the covenants, they are a clear indication of what the owner was selling when he sold the first few lots. She will vote against this amendment because she thinks that the intention is not as proposed in the special permit and does not meet the requirements of the Comprehensive Plan. The property owner is not here so she cannot ask about the intent of the protective covenants.

Carroll commented that the property was zoned AGR in 2001; the applicant did the design build-through that we now have in the ordinance and has complied with those regulations; so he believes it is too late to "close the barn door" and say we should not allow acreages there. It is zoned AGR and they are following the regulations.

Bills-Strand noted that even when there is a subdivision in the city, we often have outlots that are developed later. They don't always stay as outlots.

Motion for conditional approval carried 8-1: Carlson, Sunderman, Marvin, Taylor, Carroll, Krieser, Larson and Bills-Strand voting 'yes'; Pearson voting 'no'. This is final action unless appealed to the City Council within 14 days.

COUNTY CHANGE OF ZONE NO. 04087
FROM AG AGRICULTURAL DISTRICT TO
B BUSINESS DISTRICT, ON PROPERTY
GENERALLY LOCATED AT 134TH & 'O' STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 2, 2005

Members present: Carlson, Sunderman, Marvin, Taylor, Pearson, Carroll, Krieser, Larson and Bills-Strand.

Staff recommendation: Denial.

Ex Parte Communications: Carroll disclosed that the applicant had called him about six months ago and discussed what he wanted to do. Carroll referred him to the Planning Department.

Mike DeKalb of Planning staff submitted a letter in opposition with concerns about changing the character of the area and traffic.

Proponents

1. Dr. Rudolf Strnot testified as the applicant. He has owned the property since 1974. The purpose of the proposed change of zone to B Business is to put a small storage facility in the large area. It is roughly 3 acres. 15% is in the floodplain; however, none of the property for the storage site is involved in the floodplain. Access would be from 134th Street. He pointed out the surrounding commercial uses in the area, including the golf course to the west and Campbells and Rolling Acres Pet Cemetery to the northeast. One of the houses to the east sells trailers and some other equipment out of his home without a special permit. There will be a 50' buffer between the property line and the storage facility. He will plant trees. A Lincoln architect will design the storage facility facing the golf course so that it would appear to be townhomes. There is a need for this use at this location. There is only one facility on the east side of Lincoln. 48th Street is the closest facility to this area. There would be two full-time employees and one part-time. There is no effect on pollution; it will be a quiet environment, totally fenced and secured with cameras. He currently pays \$800 per year in property taxes. As a million dollar facility, the taxes would be \$12,000 to \$15,000 per year.

Carlson inquired as to why the applicant is seeking a change of zone for the larger area when he only needs 3-4 acres for the facility. Dr. Strnot clarified that he is only requesting the change of zone for 3.5 acres of the site. The rest is to remain AG zoning.

There was no testimony in opposition.

Staff questions

Carlson inquired about the number of acres included in the change of zone request. DeKalb concurred that the change of zone was advertised for the entire 27 acres. The legal description on the application was for the I.T. lot, which is the entire parcel. Mrs. Strnot did call and say their intent was only for the storage facility location but the staff did not have a legal description for the smaller tract. The Commission can approve something less than what was advertised.

Carlson confirmed that this change of zone is not in conformance with the Comprehensive Plan. DeKalb concurred and stated that a smaller area would not change the staff recommendation and would raise the issue of a spot zone.

Response by the Applicant

Dr. Strnot suggested that if spot zoning is a problem, he believes he is surrounded by it. He is surrounded by commercial ventures.

ACTION BY PLANNING COMMISSION:

February 2, 2005

Carlson moved to deny, seconded by Marvin.

Carlson pointed out that the Comprehensive Plan calls for AG zoning here. This change of zone request is probably premature.

Pearson suggested that the County should be looking into potential businesses that are not functioning with the correct zoning. Hopefully, the staff will follow through.

Carroll observed that, as the applicant said, there are industrial uses across the street and AGR to the west with the golf course. He also observed that the Commission is going to talk about a development to the south and change it to acreages, so this property is indeed being surrounded, and to say it should be held back for AG uses for this small property is not realistic. However, when you put "business" zoning on all that property under the County zoning, it covers a large variety of uses. It would be better to be able to target zone it rather than B Business. It would be better for the applicant to subdivide and maybe zone part of it as business. It is just not the right time, but in the future we will be needing to address this because of the surrounding uses.

Motion to deny carried 9-0: Carlson, Sunderman, Marvin, Taylor, Pearson, Carroll, Krieser, Larson and Bills-Strand voting 'yes'. This is a recommendation to the County Board.

USE PERMIT NO. 148,
KING CREST,
ON PROPERTY GENERALLY LOCATED
AT NORTH 27TH STREET AND FOLKWAYS BLVD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 2, 2005

Members present: Carlson, Sunderman, Marvin, Taylor, Pearson, Carroll, Krieser, Larson and Bills-Strand.

Staff recommendation: Conditional approval.

Becky Horner of Planning staff submitted a new condition of approval #1.1.10 to be added to the staff recommendation:

1.1.10 Revise King Ridge 2nd Addition Use Permit No. 103 to remove the TO Haas property from the King Ridge Use Permit.

Proponents

1. Ron Ross of Ross Engineering, 201 N. 8th Street, appeared on behalf of **Dr. Elliott Rustad**, the owner of the north property with the existing ranch residential home, and on behalf of **Randy Haas of TO Haas Tire** on the northeast corner of Folkways Boulevard and N. 27th Street. The two property owners have agreed to work together to obtain a use permit for the Rustad property. When King Ridge was first presented, it basically formed a use permit and preliminary plat around the then Lewis property, which Dr. Rustad purchased, and as a result it was left as an island area. The Rustad property was rezoned B-2 and the City, in reviewing the overall plan, approved a grading plan that suggested regrading the Lewis property. The grading plan shows the Lewis property house being someday removed and shows the northern area and the eastern area being graded down after the house is removed, rendering this piece of property useless unless there is access provided from the north. That was ultimately to be the plan for King Ridge, showing access to this property. That access shown on the King Ridge plan has not happened. It would cost \$120,000 to remove the trees and the soil just to do the grading to lower the site, and at that point there is no access to 27th Street.

The owners have met with Planning and submitted a site plan. During their meeting, Dennis Bartels of Public Works suggested that there be no controlled access on 27th Street and it was confirmed that the State's controlled access was stopped about one-half mile to the north. Rustad was not aware of any controlled access. Later in the staff review, it was found that the City had acquired controlled access from the Lewis' and thus the problem. Planning is suggesting that there is no access to be provided. That is the only

outstanding issue on this use permit. Ross had suggested a common driveway off of Folkways Blvd. The use permit proposes two buildings on the north and the TO Haas existing facility with a very small expansion, showing a common driveway connecting the two and a right-in right-out driveway on 27th Street.

Ross explained that this developer does not have an agreement with the King Ridge property. The developer will not do any grading into the King Ridge property, but will add some minor detention storage, with underground detention under the parking lot, leaving only the issue of no access off of 27th Street.

In that the current owners were not aware of any limited access, Carlson inquired whether that would have been revealed in the title search. Ross concurred that Rustad was not aware, but Ross himself discovered it through the title company. The controlled access was purchased from the previous owner. It was in the title search but Dr. Rustad was not aware.

2. Bill Olson testified on behalf of **TO Haas Tire and Randy Haas**, the owner of the south lot. The tire store was built in 1999 and opened in 2000. That lot was purchased from King Ridge Development in 1999, and was the first commercial property developed in that immediate area. The property was purchased without access to 27th Street, but at the time of the purchase and when it was built, and as it sits today, there was a median cut going past TO Haas, which the city has since filled, requiring a U-turn to get access to the TO Haas property. This problem for traffic trying to get to the TO Haas property diminishes the value of the tire store. They have met with Ridge Development several times and with the city. The only possible course to follow to get better access to this property is to have access off 27th Street through the adjoining property owned by Dr. Rustad.

Olson further advised that when this property was purchased by TO Haas Tire, there was no indication by the then owner (seller) that the Folkways median was going to be closed, and it was subsequently closed. Had Haas known, he would have had the opportunity to buy other lots with better access. This is why TO Haas has joined in this application. TO Haas has nine retail stores in Lincoln and has been in business in Lincoln since 1947. Without access, it really hurts the value and the business of this store. Olson requested that this use permit be approved with the site plan as submitted showing the access.

3. Mark Hunzeker appeared on behalf of **Dr. Elliott Rustad**. Rustad bought the property with the record notice of controlled access but did not have what he considered to be actual notice. Nevertheless, the fact is that the city does control access to 27th Street at this time. There are city ordinances which are clearly intended and clearly ordinarily enforced to require that when abutting property is developed, that the developer provide reasonable access to other undeveloped property. The way the property is graded, there

is a 20' differential between the grade of the Rustad property and the abutting King Ridge property. There is no way in the world that Rustad can take any access to that even if there was a road there, which there is not. Rustad has attempted to work with the owners along the east side to no avail, so they have no choice but to bring this plan forward.

Hunzeker further pointed out that the King Ridge use permit included a requirement that the developer construct a third traffic lane in N. 27th Street when the property is fully developed, so that northbound 27th would have three through lanes. This application is proposing to build that third lane up to the point of access to the Rustad property, and in addition, to dedicate additional right-of-way for construction of a turn lane to this right-in right-out access at such time as the third lane is extended all the way to the north. Hunzeker believes this is a reasonable solution. The Rustad property is zoned B-2 so he is entitled to use that property for commercial use, except that his only access is via the gravel access road that the city provided to the residence. Here we are with really only one realistic solution and the only obstacle is the condition of approval which incorporates the Public Works memo dated December 30, 2004.

Hunzeker then proposed an amendment to Condition #1.1.3 as follows:

1.1.3 Revisions to the satisfaction of the Public Works and Utilities Department memo dated December 30, 2004, except paragraph 4. "Access".

This would eliminate the problem and would give both the TO Haas property better access and some reasonable access to the Rustad property. 27th Street at this location currently has two north bound lanes. The only parcel excluded from the annexation agreement is the Rustad property. The developer of King Ridge is required to construct a third north-bound lane in the future. This developer is offering to construct that third north-bound lane up to the right-in right-out access point and dedicate enough right-of-way.

Carroll inquired whether TO Haas was in place when Rustad purchased the residential property. Hunzeker believes that it was shortly after Rustad purchased the property that the King Ridge project was approved. Carroll confirmed that when Rustad purchased the property, the only legal access Rustad had was on the gravel road along parallel to 27th Street. Hunzeker concurred, stating that Rustad still has the gravel drive access. Ordinarily, when surrounding property is developed, access is required to be provided to unsubdivided abutting property. The grading plan submitted showed that the Rustad property and the future access was going to be graded down. Rustad's only option is to take all the trees off the property and lower it about 20 feet at a substantial cost and provide a similar kind of embankment along the south boundary of his property and along N. 27th Street, which in doing so all by itself would eliminate the use of approximately ½ acre of his property. Even if he did that, there is no road to take access.

Bills-Strand inquired whether there is any other business along there with access to 27th Street. Hunzeker stated that there are no businesses between TO Haas and the next major street to the north. Lincoln Crossing has several access points.

Bills-Strand wondered whether a service road could be constructed where the gravel road exists. Hunzeker does not believe we would want that much commercial traffic to cut across the intersection of 27th and Folkways to get there. It would not meet any design standard for a curb cut, much less a private roadway.

Opposition

1. **Danay Kalkowski** appeared on behalf of **Ridge Development Company**, the owners and developers of the King Ridge property. Ridge Development originally owned almost the entire quarter section, 147 acres, except for the property that was owned by the previous owner before Rustad. King Ridge has almost ½ mile of frontage onto 27th Street. King Ridge is not opposed to commercial development on the Rustad property nor the expansion of TO Haas. But King Ridge is opposed to the request for access to 27th Street and agrees that the access needs to be shown through the King Ridge site. Access to 27th Street is not the only solution. Kalkowski acknowledged that King Ridge did attempt to work with the previous owners to include the property as part of the King Ridge property but they had no desire to participate. From the very beginning, the city has been clear that there would be no access to 27th Street except at Folkways Boulevard and Enterprise Drive. The city would not allow any right turn lanes into the King Ridge development. As part of the King Ridge use permit, the developer was obligated to build a continuous third deceleration lane from North Hills Drive all the way up to the edge of the property, with the understanding there would be no other access at 27th Street. The grading of King Ridge was influenced by the fact that there would not be access to 27th Street. An internal access road network was required. The lots had to be graded in order to make the Enterprise Drive access work. King Ridge was required to show access to two areas that had relinquished access, including the Cross Ridge property located on the north side. The second is the Rustad property.

Kalkowski also suggested that the preliminary plat grading plan is “conceptual” on the Rustad property, and that a more specific plan would be done when Rustad came in with his own use permit. In order for the Rustad property to work with the access shown, it would need to be graded and lowered somewhat, the same as some of the King Ridge property. There are reasonable ways to make the access work without wiping the entire site down 20 feet.

Because of the small size of the property and the fact that it is B-2, Kalkowski stated that King Ridge has always anticipated that Rustad would work with King Ridge to provide the access. King Ridge is prepared to build the road to the Rustad property when it is developed. If the city allows access to 27th Street for this development, it opens the door for other development along 27th Street to come in and ask for the same access.

King Ridge supports the Planning staff recommendation and conditions of approval.

Marvin expressed concern about the TO Haas access as it exists today. Kalkowski suggested that the two sites are interconnected. You can go from the Haas property to the Rustad property. Her clients are ready and willing to build the access road to the Rustad property. It does not have to be the exact grading plan shown on the preliminary plat. That was entirely conceptual.

2. Randy Hoskins, City Traffic Engineer, clarified that at one point he said he supported access to this site. At the time that statement was made, he was not aware that the city had purchased the control of access across this property and that these things had been planned out in advance with the Kind Ridge development. Once he found that out, he advised the owners that he was no longer in support of the access. There are no driveways along 27th Street between Superior and Interstate 80. At the time when the city was constructing 27th Street, it was a requirement of the federal funding to buy the control of access to not allow direct access from businesses to 27th Street. The existing gravel driveway could not be used as commercial access. The median break into the Haas site was closed with the installation of the traffic signal at 27th and Folkways. The location where that median existed was within the left turn lane for the westbound traffic at the intersection. The city's experience has shown that to create a dangerous situation.

Dennis Bartels of Public Works explained that when traffic studies were done for King Ridge, they were showing a volume of traffic that warranted a signal at the Folkways intersection and that was one reason for closing the median break because of the stacking.

Carlson referred to the northeast corner of the Rustad property. The applicants are saying that presents a very serious challenge, and the adjacent property does not believe it is that big of a challenge. What is the alternative to not allowing access on 27th? What is the city's position on how the Rustad property should gain access? Bartels suggested that the 20 feet of cut can be adjusted. If the two property owners cooperated, the same dirt could be moved with a scraper from one side of the property line to the other. Being able to maintain the access control on 27th Street is very important as far as moving traffic and from a safety standpoint.

Response by the Applicant

Ron Ross urged that the access to the TO Haas property has become frustrating and extremely economically depressing. These two developers have agreed to go ahead and build the third northbound turn lane into the site. Hunzeker informed the Commission that they had meetings with the King Ridge developers and were told "no, thanks" when asked about the possibility of access along the east property line of the TOHaas property. King Ridge told them they would have to buy the lot. King Ridge wants the Rustad property cut down to improve the visibility of the entire center. It is a mistake on the part of the city not to enforce the ordinance to provide reasonable access to the Rustad property. The city has

acknowledged this mistake but they are not willing to say it should be corrected by giving access to 27th Street. The mistake occurred in the enforcement of the subdivision ordinance when this property around the Rustad property was developed. These applicants do not have reasonable access and the cost of that access should not be borne by Elliott Rustad. Hunzeker believes that this application proposes a reasonable solution.

Ross noted that there is a letter on file from Danay Kalkowski that indicates that Ridge Development is not interested in meeting with these two developers and is not interested in working out any ultimate access solution.

Carlson believes that is a different position than Ridge Development is suggesting today. Hunzeker stated that this use permit would not be here if the position as represented by Ridge Development today had been communicated to these applicants. Although, it would have required a lot of negotiation. The access that they are proposing even now is very circuitous viz-a-viz the Rustad property.

Bills-Strand wondered about landlocking. Rick Peo of the City Law Department clarified that the city bought the control of access. It is just a long time come situation. There have been various meetings over several years to negotiate an access issue on this development and there has not been a solution that meets all of the parameters for everyone involved. There has never been a win-win situation identified. Access is shown and reasonable access is there on the drawing board so the property is not technically landlocked, especially from the existing residential use. But no one has reached a solution on how to get the pieces to meet. That is why they are here today.

Marvin asked whether "reasonable" access means you can force them to grade their property down. Peo pointed out that the initial decision making fell short when the first plan was approved.

Carlson moved to delay for two weeks, seconded by Sunderman.

Carlson believes the adjacent property is presenting a new position. It sounds like they are interested in participating in some sort of mutual grading. It also sounds like they are not interested in additional access to 27th Street and perhaps that is the leverage to participate in a mutual grading plan.

Marvin stated that he will support the delay. The issue of access off of 27th Street, from the city's perspective, has to do with rear-end accidents. He would like to see the access drawn through internally.

Carroll does not believe the two parties are going to get together. He does not believe a delay is going to help the situation. If the applicant wants a delay, the applicant can ask for it.

Taylor agreed that the parties will probably not reach an agreement.

Carlson understands that the applicant has not asked for a delay and he is also certain that they want direct access on N. 27th. Maybe the issues can be satisfied by providing a deceleration lane. Maybe the applicant would like two weeks to further negotiate rather than be denied access on 27th Street.

Bills-Strand believes there have been a series of mistakes made by all three parties. Maybe the city is a little at fault in not granting access to a property that is landlocked; Rustad should have read his title insurance closer; and Ridge Development should try harder when submitting a grading plan on property that they don't even own. She wants to give two weeks to work something out.

Motion for two-week delay carried 7-2: Carlson, Sunderman, Marvin, Pearson, Krieser, Larson and Bills-Strand voting 'yes'; Taylor and Carroll voting 'no'. This application will be scheduled for continued public hearing and action on Wednesday, February 16, 2005.

CHANGE OF ZONE NO. 04034
FROM AGR AGRICULTURAL RESIDENTIAL
TO R-3 RESIDENTIAL,
ON PROPERTY GENERALLY LOCATED
AT S. 66TH STREET AND HIGHWAY 2.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 2, 2005

Members present: Carlson, Sunderman, Marvin, Taylor, Pearson, Carroll, Krieser, Larson and Bills-Strand.

Staff recommendation: Approval.

Ex Parte Communications: Bills-Strand disclosed receiving voice mail messages, but she chose not to listen to them.

Proponents

1. **Mark Hunzeker** appeared on behalf of the applicant and apologized for not submitting a written request to place this on the pending list for another month. They have been meeting with the neighborhood and hope to have another meeting within 10 days in anticipation of reaching a tentative agreement on how to develop this parcel and the neighboring tract. Hunzeker requested a four-week delay.

Carlson moved to delay four weeks, with continued public hearing and action on Wednesday, March 2, 2005, seconded by Larson and carried 9-0: Carlson, Sunderman, Marvin, Taylor, Pearson, Carroll, Krieser, Larson and Bills-Strand voting 'yes'.

COMPREHENSIVE PLAN CONFORMANCE NO. 04013,
AN AMENDMENT TO THE ANTELOPE VALLEY
REDEVELOPMENT PLAN

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 2, 2005

Members present: Carlson, Marvin, Taylor, Pearson, Carroll, Krieser, Larson and Bills-Strand; Sunderman declaring a conflict of interest.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

Ex Parte Communications: Larson indicated that he has had conversations with some people on both sides gathering information. Bills-Strand, Marvin, Krieser and Taylor indicated that they had had communications with Larson.

Ed Zimmer of the Planning staff submitted a communication from Delores Lintel in support.

Proponents

1. Marvin Krout, Director of Planning, reminded the Commission as to their role on this application, that responsibility being to advise the City Council on whether or not certain actions are consistent or not consistent with the spirit and intent of the adopted Comprehensive Plan. The Commissioners may express personal views or concerns, etc., but when it comes to voting, the focus needs to be whether or not it is consistent with the Plan. Krout believes the Commissioners will find it difficult to vote "no" on this question because there are statements in the Comprehensive Plan about protecting and enhancing the Downtown area for commerce, entertainment, tourism, etc., and it calls for the city to use redevelopment power to assist in revitalization of the Downtown and surrounding areas. The Planning Commission previously approved the Antelope Valley Redevelopment Plan as an element of the Comprehensive Plan, and this proposed amendment just adds some more specificity to that adopted plan by indicating the specific proposed use for this block. The Antelope Valley Plan today specifically calls for extended stay hotel rooms as part of the mix of uses. As far as specifications as to the amendment not being consistent as far as potential for negative impacts on property owners and a concern about compensation, Krout suggested that it is wrong to draw a conclusion today that these property owners are going to be negatively affected. It is an awkward time in the process because we do not know the impacts, but the City staff and the City Council always has the bright spotlight shining on them to make sure that the process results in fair decisions.

Krout went on to state that the Comprehensive Plan is all about change and how we adapt to it and plan so that change is positive and how we mitigate the negative impacts that might otherwise arise. The term “development” is not just getting bigger, but advancing to some higher planning picture. Even though this is a relatively small step in the Antelope Valley Plan, and because it is a transitional site for a plan still in the development process, Krout believes it is an important first step because this will send a signal to the development community about the level of the community’s resolve to tolerate a level of messiness that sometimes is inherent as part of the process in order to assist in revitalizing the core area with additional projects in the future.

Pearson expressed an interest in knowing why the Director chose to give an introduction on this application. “Do you agree that the Comprehensive Plan is not black and white but a good feeling document, a good intention document?” Krout responded, stating that there are probably times when you can find elements of the Plan that can support one view as well as the opposite view. Krout agrees that the Plan is subjective and each of the Commissioners can weigh the elements of policies and principles in different ways. He would just suggest that in this situation, the evidence is pretty overwhelming in terms of the references in the Plan.

Pearson inquired as to how far the Downtown extends to the east. Ed Zimmer stated that the boundary half-way into 17th and 18th Streets is a shift in the B-4 zone with a different set of requirements. The Lincoln Center Business District goes well east of this to about 24th and 25th. This is on that cusp between the core Downtown and east edge Downtown, but it is all Downtown.

Carlson believes it is valuable to have this conformance hearing to try to make sure that the facts are understood and presented. Krout believes there is overwhelming support for finding consistency based on the documents that have previously been approved.

2. Marc Wullschleger, Director of Urban Development, stated that Urban Development is the designated redevelopment authority for the City. He assured that assistance is being provided to business and property owners. Urban Development will continue to work with business and property owners to address their needs. Urban Development has had numerous meetings with the business and property owners since the project was announced. He submitted a list of important meetings that have been held with the owners and renters on the block. Specifically, they have met with The Antelope Valley LLC and the former Duteau Building owners regarding their parking lot on this hotel block. Urban Development has offered them potential temporary solutions and a potential permanent solution. Urban Development has also offered them some parking on 18th Street. Urban Development has asked that appraisals begin at this time, and each one of the property owners has given their permission. The City cannot extend offers to purchase until after the project is created and the redevelopment agreement is approved by the City Council.

3. Dr. Prem Paul, Vice Chancellor, Research, at UNL testified in support as to the positive impact this site and hotel will have on the University's research and development efforts. As the UNL enterprise becomes stronger and better and more funding comes to UNL, the majority of the benefit will be to the City. Visiting scholars play a tremendous role in conducting research. These scientists will come for one week, one month, three months, or even a year. The challenge has been to find housing for such scholars which is close to the University. The scholars are likely to collaborate. UNL will tremendously benefit from this facility being located close to the research campus.

Pearson inquired as to where these visitors have been housed in the past. Dr. Paul referred to the Kellogg facility on East Campus, which is being converted to the School of Natural Resources building. There are a small number of apartments but the need is not being met.

4. Joel Pedersen, City Law Department, appeared as a representative of the Joint Antelope Valley Authority, and talked about the relocation assistance component. Relocation assistance is so heavily regulated that it would be improper for the Mayor to oversee individual transactions. Fairness and justice means that the rules apply to all. Most of the relocation assistance rules are done by the state. The City relies on the Uniform Relocation Assistance Act, which is overseen by the federal government. There is one rule book, and it does not depend on whether you came to a public meeting and complained, or presented petitions.

Pedersen noted that most of the complaints focus on lost profits for a business and replacement cost for value. Fair market value is ultimately something that the property owner can take to court. The relocation assistance is reviewed administratively by the state and federal government.

Taylor believes that the Commissioners should be able to take human issues into consideration. The Commission is looked at publicly because each Commissioner represents the populous, so this dialog is helpful to make good decisions.

Carlson pointed out that the Comprehensive Plan speaks in several areas about the importance of protecting and maintaining existing businesses and promoting small businesses. "Would you agree that the elimination of a number of businesses is a broad enough impact and a general enough principle to entertain as part of this process?" Pedersen's response was that Nebraska follows the area concept in terms of blighted area. When the Commission takes action on this amendment, it concerns the broader area. He respects that there are existing businesses, but Nebraska is clear that blight removal is a public use. That public use determination happened with a constitutional amendment in the late 1970's. The City attempts to bring a multi-faceted component – we do the acquisition, we hire good appraisers, we get fair market value, we are not low-balling the numbers. With relocation assistance, the city is working with the owners to find good sites and to work with them on their actual needs for moving. DLA has been very active in bringing a community

approach to finding new venues for business. If the standard is that no one can complain, we're not going to meet that.

Marvin suggested that the city needs to work hard to make sure they meet replacement costs. Pedersen stated that the City pays fair market value—not replacement cost. This was a Supreme Court decision in 1994. There are rare circumstances where replacement cost is used. He is not aware of an insurance product that insures against condemnation or eminent domain authority.

Pearson wondered why the hotel in this case wouldn't just buy the land instead of going through this process. Pedersen's response was that the city is trying to direct investment to this area. The City is spending the money on a roadway and waterway. The third component has always been community revitalization. To develop on this site is much more expensive than to go out and put in new infrastructure. The proximity to the University tells us there is a public policy reason to direct investment here. Pearson assumed, then, that the city cannot provide incentive or infrastructure costs without going through this process. Pedersen stated, "that is the law". The local tools are pretty well restricted to the Community Development Law.

5. Polly McMullen, Downtown Lincoln Association, reviewed the correspondence log outlining the details of communication and relocation assistance which has been provided to Samurai Sam's by DLA. The DLA maintains a comprehensive data base of all space available in the Downtown, and shortly after Hammons made the announcement, DLA contacted Samurai Sam's and requested opportunity to meet with Mr. Wieting and share the data base of space with him. On December 30, 2004, DLA sent a letter to 31 property owners, commercial brokers and developers in the Downtown with some of the specifics of the needs of Samurai Sam's. DLA is a facilitator and advocate for Downtown business. DLA heard back from five different parties and several had multiple options that they thought might be suitable. The information was referred to Samurai Sam's and McMullen understands that Mr. Wieting did contact several people. She believes there are some good possibilities for Samurai Sam's and that it has a bright future in the Downtown.

6. Wendy Birdsall, President of the Convention and Visitors Bureau, testified in support, stating that the addition of a Marriott combined with Residence Inn makes this situation ideal in the Downtown and University area. This location lends itself well to UNL and fills a need for an extended stay gap in the Downtown area. This will complement the vibrancy of Downtown and the Antelope Valley Plan.

7. Jim Fram, President of the Lincoln Chamber of Commerce, testified in support. Antelope Valley is a great project for our community. This project will initiate private investment, and that is what is needed to continue this great project. This project is supportive of the research and development mission of the University. The Chamber of Commerce also represents some members that are affected by possible relocation. Fram assured that the

Chamber will be side-by-side with those members in monitoring the process and making sure they receive fair and equitable treatment.

8. Terry Uland, Director of Neighborhoods, Inc., who also served on the Antelope Valley Advisory Committee and co-chaired the Neighborhood Advisory Committee, testified in support as he believes the amendment is very consistent with the Redevelopment Plan. It is unusual to have a project like this that has a good developer that delivers a good project and can engender the east and Downtown interests at the same time. "It's a bulls-eye". There was always an assumption that there would have to be some property assemblage and eminent domain proceedings. If the city backs off of this sort of effort, it will cripple the efforts to do the redevelopment.

9. Dale Nordyke, The Mill, testified in support as his business has been through this same process. He testified that relocation can be done. It is not fun, but it worked out well for The Mill. The Mill received about half of what it cost to relocate, but The Mill was able to move to a larger place and a good corner. He suggested that the property owners also be communicated with after the process.

10. Jane Stricker, Footloose and Fancy, 1219 Q Street, testified in support as chair of the Downtown Retail Council. The Downtown Retail Council was established to serve as a voice and advocate for small businesses in the Downtown area. The Retail Council has been actively involved with the Downtown Master Plan process to make sure small businesses are adequately represented. The proposed Residence Inn is an opportunity to bring new investment, visitors and customers to the Downtown businesses.

11. Bob Hampton, President of Hampton Development, testified in support. Lincoln has a lot invested in the Antelope Valley project and we need to support Downtown businesses and have more hotel rooms for more events. We also need to support the University. He was surprised that Hammons wanted to build a hotel of this quality in the Antelope Valley area in that location this quick. It says a lot about the plan and the project.

Opposition

1. Mark Whitehead, President of Whitehead Oil, testified in opposition. It was in 1986 when he did his project at this location and the area had been declared a blighted. He was able to get bond financing which required the blighted designation. TIF was not part of the financing, but it was recognized as a beautification project. Whitehead does not believe it is entirely a blighted area as the designation would suggest. These existing businesses are being supported by the public. There is a process in place to analyze the fair market value, but he does not necessarily trust that process. He does not know that he is necessarily opposed to this project. On the face, this could be a good project for the City; however, he would like to know his alternatives. "Offers cannot be made prior to an approval process". Likewise, this property cannot be condemned for a specific use until the process has been

identified. This project will go out to bid after being designated. He did talk with the Urban Development Director and was advised that the appraisal has been started. He has not yet heard from an appraiser nor Urban Development since then. Whitehead requested that this amendment be put on pending until there is a better idea on the appraisals, etc. The property and business owners need to have a clearer understanding. Whitehead's business cannot go to another comparable piece of property that is going to utilize the University and Downtown demographics that he currently has. He does not want to face this same problem again. He has not seen anything that shows a convenience store use in the Antelope Valley Plan. He has not received an opinion on where a suitable place in this new vision might be.

Pearson inquired whether anyone is offering to help Whitehead find another blighted area. Whitehead does not know that blighted is relevant but the key issue is to find another location where he can capture the same demographics. He is no further along than when he first talked with Urban Development, so he is not comfortable.

Marvin inquired whether the appraisers will use the financials of Whitehead's business to estimate the fair market value or whether it is strictly based on location. Whitehead stated that he has not gone through this process before, but he believes they will do so to the extent he offers financial statements and performance. Whitehead owns the improvements, buildings and underground storage tanks, but the real property is owned by Duteau. Sean Wieting is one of his tenants.

2. Rick Krueger testified in opposition. He pays a mortgage in Antelope Valley. He distributed specifics on square footage, floor area, trip counts, employees and parking for the Downtown Lincoln Physicians Building. They have three major tenants, which represents 53% occupancy and 29,913 sq. ft. There are currently 53 full-time employees and nine part-time. Total parking, including the 19th and "O" site is 195 stalls. 81 stalls are currently assigned, with the balance of 114 unassigned parking stalls. The City is proposing to take 76 of those stalls. Krueger renewed his request to the Commission to place this amendment on pending until his parking issues are resolved.

Marvin recalled someone saying there was an offer of potential parking stalls on 18th Street. Krueger believes it might be about 20-21 stalls. That is the same offer he got when he started the development four years ago. He has been asked to consider participation in a public/private partnership for a parking garage on the north side of his lot that may occur in four years, but he does not know if that is going to work.

Krueger has owned the building at 19th & O Streets for four and one-half years. His building represents an integral part of what's going to be important about that intersection and is the first Antelope Valley project. Krueger confirmed that this is a multi-million dollar project and that it is all private banking. He will need to have something he can take to the bank. Krueger stated that he is happy to advance Antelope Valley, but he is doing it in the private market.

3. Sean Wieting, owner of **Samurai Sam's**, testified in opposition. He is totally against the project because it affects his business and his family. Relocation is not an option because it represents only 10% of the cost needed to actually relocate. He believes he will be out of business because he cannot afford the additional cost to relocate. When DLA talked about meeting with him and finding other potential locations, he told Polly McMullen that it is pointless to look for other locations when there are no means to finance the relocation. He showed the Relocation Assistance Package provided to him by Urban Development, which talks about payments designed to reimburse for cost of moving, searching, actual loss and expenses in re-establishing, but the fine print talks about re-establishment expenses, "...expenses must be reasonable and necessary and a payment will not exceed \$10,000". Wieting submitted his expense report from Judd Bros. Construction who built their location, showing a total cost of \$56,857.14. Wieting stated that he will lose his home if he loses his business. The number one factor for his business is location. Wieting has signed a five-year lease with Whitehead Oil, with a five-year extension.

4. Mark Hunzeker appeared on behalf of **Rob Richter**, owner of **Miracle Mile Motors**. He agrees that the proposed land use might be in conformance with the Comprehensive Plan, but it is not only those elements of the Antelope Valley plan or Downtown redevelopment aspects that the Commission should review. Hunzeker suggested that the manner in which the plan has been implemented to date ought to notate in favor of slowing down this process at a minimum. Mr. Richter learned about this project in a phone call from the press and that runs directly counter to a lot of the language in the entire chapter called Plan Realization. There are a lot of provisions that talk about encouraging and helping existing businesses grow, but it also talks about keeping people knowledgeable about and involved with the Comprehensive Plan implementation. Some of the means include encouraging developers and others with planning proposals to make early contact with neighborhood groups and other interested parties. Here we are with the city basically telling four property owners that they are going to take their property and sell it or subsidize it and give it to a hotel developer. Yet they find out about it within hours before it is announced to the press. There is no resolution of serious issues relative to the viability of people who have put their hard earned money into existing businesses. Mr. Richter has been in business at 21st and O for 37 years. He followed the Antelope Valley redevelopment process carefully. It did not take him long to figure out that he would get moved off of 21st and O and he was told that. So in looking ahead, he purchased this property at 17th and P from Duteau when they left Downtown. Mr. Richter feels like he has a bulls-eye on his back at this point. If there is no place for a convenience store in Antelope Valley, there is not going to be anyplace for a used car mall. And the locations that are being suggested are nowhere near the Downtown area. It seems that there are a lot of issues that need to be resolved. There needs to be more time for people to examine this and Hunzeker requested the amendment be placed on pending.

5. Bob Pickering of Pickering Automotive, corner of 18th and P Streets, testified that he is not necessarily opposed to this project and not opposed to change. He believes that Antelope Valley is good for the city, but he is not a willing seller. Fair market value is not enough for anybody.

Staff questions

Marvin asked Urban Development to explain the \$10,000 maximum relocation cost. McGee stated that with respect to the businesses and property owners, it is the intent that none of them go out of business and that they are all transitioned into new locations. The relocation is different if you are a businesses as opposed to an owner. Urban Development has worked with each of the owners.

With respect to the relocation assistance, McGee suggested that the numbers that were given by Mr. Wieting suggest that what is being replaced is a brand new facility. Relocation assistance can provide assistance to move the business into another location, not necessarily replacing everything with brand new facilities but with what Urban Development would consider to be equivalent facilities. He believes the cost would be much less than \$55,000.

Pearson asked for clarification as to how this particular site was chosen. McGee explained that this particular project was identified as part of a concept that the Antelope Valley plan brought forward. Once that plan was developed and approved, Urban Development received a lot of interest on the part of many developers to look at various portions of this area. This is one where the developer was very specific – he wanted to build a hotel on this block, so the city began discussions to see what additional steps are necessary if that is to become a reality. The step we are in today is to create a project. There are two more critical steps. There will be public advertising for redevelopment on this block, seeking proposals from anyone who might want to come forward. Once a developer is selected, the final step is that the city will negotiate with that developer and prepare a redevelopment agreement which identifies in detail the kinds of assistance that the city would provide, including TIF, as well as the kind of project and when it would be built. It is not until that point that the city has any money to begin that project. It is not until that point that the city would be able to extend any offers to purchase on any of these properties.

McGee reiterated that Urban Development has worked with the property owners to begin the process of appraisal so that they will know as soon as possible what the appraised value is and the conditions of the purchase.

Pearson wondered whether there are other site options. McGee stated that this is the preferred site for this particular user. There are certainly other sites that other developers have considered, but for this particular developer, this is the site that was identified.

Pearson confirmed that the city staff believes that this is the prime location for a hotel of this type in the area. McGee responded, stating that much of Antelope Valley today is in the floodplain and cannot be developed so we look at those areas that can be developed today. The sites along 19th Street are impacted by the fact that a road will be built there in a few years. This particular site and the area right around it is probably the most attractive to developers today. It is the closest site to both the Downtown and the University.

In terms of rebuttal, McGee stated that Antelope Valley is something that has developed over many years and many, many meetings. It is an effort to address many things – flood control, traffic control, and an effort to bring new private development into this part of our community, and that is what this project is all about. It is the first amendment being proposed to the Antelope Valley plan and he hopes it is the first of many amendments. The City does want Mr. Krueger to remain in the area and a number of options have been identified to address his concerns; Urban Development has identified 10 different locations where some temporary parking could possibly be provided; they have talked most recently about additional on-street parking on 18th Street. The City does want to provide the temporary parking until we can find a permanent solution, which may be a parking garage. Urban Development wants to work with each of these owners to address their needs. Delay would not serve any of us well because offers cannot be extended on the purchase until the other two steps are in place.

Joel Pedersen clarified that fair market value is for the property acquisition. In addition, there is relocation assistance which includes actual moving expenses. There is a cap of \$10,000 on re-establishment expense, but that is in addition to moving. It is fair market value for the acquisition, then there is moving and then a number of components paid out for the actual relocation assistance. The testimony today is a very narrow reading of the regulations. We need that relocation assistance study that staff would do.

ACTION BY PLANNING COMMISSION:

February 2, 2005

Carroll moved that the proposed amendment to the Antelope Valley Redevelopment Plan be found in conformance with the Comprehensive Plan, seconded by Larson.

Taylor acknowledged that he voted against this at the last meeting; however, he believes that Downtown is a vital part of what makes Lincoln an outstanding community. He is interested in anything we can do to revitalize. All points considered, and also considering the need for relocation, he now sees that this does conform to the Comprehensive Plan and he is confident that the situations that business people are confronted with will come out very well.

Larson commented that it isn't very often that a project has as much value added, as much synergy as this one. He believes history has proven that when a project like this goes forward, there are more new businesses that form than are eliminated. He does not believe we will eliminate any businesses in this case. The revitalization of the area is very important. That

area has been suffering for years because it is in an older part of town and investors have not been interested in buying or developing property there. This is an opportunity for those people who have owned property to see their property values increase. It will revitalize that community. The University is going to benefit tremendously. The research component of the University is one area where we can get outside financing into our community. The University employs some great scholars and they invite others and it also invites the exceptional students to come in and participate. It gives us another center of excellence for the University and that is something for which we must strive. This project is a generator of investment, not just from John Q. Hammons and not just from people who are going to build other developments around it, but for the University. There will be jobs created. It lends to economic development which is what we all want.

Carroll observed that the Planning Commission is voting only on conformance to the Comprehensive Plan, and he believes it clearly conforms. The Antelope Valley plan is redeveloping that area. We are asked whether this is in conformance and he thinks that it is.

Carlson commented that the Comprehensive Plan is a guideline not only for what we should do, but also how we should be doing it. Antelope Valley is supposed to be about reinvesting. We have Mr. Krueger and other people that are already doing that with their own money. They are doing what the Comprehensive Plan and Antelope Valley Plan says they should do, and we are rewarding them by taking away their land. He does not believe that is how we should be doing it.

Pearson does not believe this is a slam dunk. The Comprehensive Plan is a guideline and talks about community development from the inside, where we have local, successful businesses that we want to promote. And then we have an outside developer bringing in this gem. This issue could go either way. She believes that whether or not it conforms to the Comprehensive Plan is simplistic. She is struggling. She has not made up her mind. As a small business owner she wants to say no, but as a planner in this position she thinks she will have to vote that it does conform to the holistic Comprehensive Plan, specifically to Antelope Valley, but it is not a slam dunk. It is not an absolute.

Marvin believes this amendment will pass this low threshold. He urged that the people that come away from this as the winners need to work hard with the businesses between now and the time it comes to the City Council. That is a much taller hurdle and the city needs to work with those business owners and they have to be at the table and at least somewhat comfortable that they are going to be able to work through this.

Bills-Strand agreed with Terry Uland's testimony about this being the first step and if we don't get this first amendment going, the whole thing is going to be tough.

Motion for a finding of conformance with the Comprehensive Plan carried 7-1: Marvin, Taylor, Pearson, Carroll, Krieser, Larson and Bills-Strand voting 'yes'; Carlson voting 'no'; Sunderman declaring a conflict of interest. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 4:35 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on February 16, 2005.

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